

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Paul J. Young, et al.  
 Serial No.: 10/663,154  
 Filed: September 15, 2003  
 For: STABLE ACIDIC MILK BASED BEVERAGE  
 Customer No.: 29540

**RECEIVED**  
**AUG 19 2004**  
**OFFICE OF PETITIONS**

PETITION UNDER 37 CFR §1.182

Attn: Ms. Kenya A. McLaughlin  
 Petition Attorney

Mail Stop Petitions  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

Sir:

Applicants hereby petition the Commissioner to allow the entry of the concurrently filed amendment and substitute specification so that the above-application can be granted a filing date of September 15, 2003. This Petition is being filed in response to the "Decision on Petition" mailed July 16, 2004 dismissing Applicants' initial "Petition to Accord Filing Date" filed on June 14, 2004.

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express mail in an envelope addressed: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313, on August 17, 2004

Lindsay S. Adams  
 Attorney  
Lindsay S. Adams  
 Signature

August 17, 2004

Date of Signature

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Account No. 50-1145.

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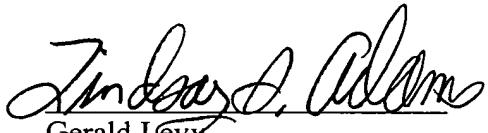
EV167246958US

The present application is a division of Serial No.: 09/808,769 filed March 15, 2001. The "Transmittal Letter" filed with the present application under heading 18 recites that the present application is a division and "incorporates by reference" the entire disclosure of parent application, Serial No.: 09/808,769. A copy of the "Transmittal Letter" is attached as Exhibit A. The Manual of Patent Examining Procedure at §201.06(c)(II)(A) states that an application not entitled to a filing date due to omitted material can be completed upon submission of the material that was originally incorporated by reference. Accordingly, Applicants request that the present Petition be granted and the amendment and specification be entered thereby maintaining the filing date of September 15, 2003 for the present application.

Applicants also submit herewith a check for \$130.00 to cover the requisite Petition fee. However, if any additional fees are necessary, please charge such sums to our Deposit Account 50-1145.

Applicants also hereby request that, prior to rendering a Decision, the Petition Officer contact Applicant's representative at the telephone number set forth below if any additional submissions are required to complete the Petition.

Respectfully submitted,



Gerald Levy  
Reg. No. 24,419

Lindsay S. Adams  
Reg. No. 36,425

Attorneys for Applicants

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# UTILITY PATENT APPLICATION TRANSMITTAL

(Only for new nonprovisional applications under 37 CFR 1.53(b))

Attorney Docket No. 001674.093686

First Inventor Paul J. Young

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Title Stable Acidic Milk.

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OFFICE OF PENDING

**APPLICATION ELEMENTS**

See MPEP chapter 600 concerning utility patent application contents.

**ADDRESS TO:**Mail Stop Patent Application  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

- Fee Transmittal Form (e.g., PTO/SB/17)  
*(Submit an original and a duplicate for fee processing)*
- Applicant claims small entity status.  
See 37 CFR 1.27.
- Specification [Total Pages 22]  
*(preferred arrangement set forth below)*
  - Descriptive title of the invention
  - Cross Reference to Related Applications
  - Statement Regarding Fed sponsored R & D
  - Reference to sequence listing, a table, or a computer program listing appendix
  - Background of the Invention
  - Brief Summary of the Invention
  - Brief Description of the Drawings (*if filed*)
  - Detailed Description
  - Claim(s)
  - Abstract of the Disclosure
- Drawing(s) (35 U.S.C. 113) [Total Sheets ]
- Oath or Declaration [Total Sheets 2]
  - a.  Newly executed (original or copy)
  - b.  Copy from a prior application (37 CFR 1.63(d))  
*(for continuation/divisional with Box 18 completed)*
    - i.  **DELETION OF INVENTOR(S)**  
Signed statement attached deleting inventor(s) name in the prior application, see 37 CFR 1.63(d)(2) and 1.33(b).
- Application Data Sheet. See 37 CFR 1.76

7.  CD-ROM or CD-R in duplicate, large table or Computer Program (Appendix)
8. Nucleotide and/or Amino Acid Sequence Submission  
*(if applicable, all necessary)*
  - a.  Computer Readable Form (CRF)
  - b. Specification Sequence Listing on:
    - i.  CD-ROM or CD-R (2 copies); or
    - ii.  Paper
  - c.  Statements verifying identity of above copies

**ACCOMPANYING APPLICATION PARTS**

9.  Assignment Papers (cover sheet & document(s))
10.  37 CFR 3.73(b) Statement  Power of Attorney  
*(when there is an assignee)*
11.  English Translation Document *(if applicable)*
12.  Information Disclosure Statement (IDS)/PTO-1449  Copies of IDS Citations
13.  Preliminary Amendment
14.  Return Receipt Postcard (MPEP 503)  
*(Should be specifically itemized)*
15.  Certified Copy of Priority Document(s)  
*(if foreign priority is claimed)*
16.  Nonpublication Request under 35 U.S.C. 122 (b)(2)(B)(i). Applicant must attach form PTO/SB/35 or its equivalent.
17.  Other: .....

18. If a CONTINUING APPLICATION, check appropriate box, and supply the requisite information below and in the first sentence of the specification following the title, or in an Application Data Sheet under 37 CFR 1.76:

 Continuation Divisional Continuation-in-part (CIP)

of prior application No.: 09/808,769.....

Art Unit: 1761

Prior application information:

Examiner Leslie Wong

For CONTINUATION OR DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

**19. CORRESPONDENCE ADDRESS** Customer Number:OR  Correspondence address below

Name	Gerald Levy				
Address	Pitney, Hardin, Kipp & Szuch LLP				
	685 Third Avenue				
City	New York	State	NY	Zip Code	10017
Country	USA	Telephone	212-297-5800	Fax	212-682-3485

Name (Print/Type)	Lindsay S. Adams	Registration No. (Attorney/Agent)	36,425
Signature			Date 9/15/03

This collection of information is required by 37 CFR 1.53(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Patent Application, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.